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In the Supreme Court of the United States

OCTOBER TERM, 1960

NATIONAL LABOR RELATIONS BOARD, PETITIONER,

v.

LOCAL 1566, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

The National Labor Relations Board prays that a writ of certiorari issue to review that part of the decision of the United States Court of Appeals for the Third Circuit entered in the above entitled case on May 4, 1960, which denies enforcement of the reimbursement provisions of the Board's order.

OPINION BELOW

The opinion of the Court of Appeals (Appendix, pp. 12-20, *infra*) is not yet reported. The findings of fact, conclusions of law, and order of the Board (B.A. 2a-36a) [1] are reported at 122 NLRB 967.

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[1] "B.A." references are to the appendix to the brief of the Board in the court below.

JURISDICTION

The decree of the Court of Appeals (Appendix pp. 21-25, *infra*) was entered on June 14, 1960. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the Board, as a remedy for an arrangement between the employer and the union which unlawfully conditions preference in hiring upon union membership, may require that the employees be reimbursed for all dues and assessments which they paid to the union under that arrangement.

STATUTE INVOLVED

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C. 151, *et seq.*), are as follows:

> Sec. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3).
>
> Sec. 8. (a) It shall be an unfair labor practice for an employer—
>
> * * * * *
>
> (3) by discrimination in regard to hire or tenure of employment or any term or condition of employ-

ment to encourage or discourage membership in any labor organization: *Provided*, That nothing in this Act, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in section 8(a) of this Act as an unfair labor practice) to require as a condition of employment membership therein on or after the thirtieth day following the beginning of such employment or the effective date of such agreement, whichever is the later, (i) if such labor organization is the representative of the employees as provided in section 9(a), in the appropriate collective-bargaining unit covered by such agreement when made; and has at the time the agreement was made or within the preceding twelve months received from the Board a notice of compliance with sections 9(f), (g), (h), * * *

* * * * *

(b) It shall be an unfair labor practice for a labor organization or its agents—

* * * * *

(2) to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a) (3) or to discriminate against an employee with respect to whom membership in such organization has been denied or terminated on some ground other than his failure to tender the periodic dues and the initiation fees uniformly re-

quired as a condition of acquiring or retaining membership; * * *

* * * * *

Section. 10. * * *

(c) * * * If upon the preponderance of the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action including reinstatement of employees with or without back pay, as will effectuate the policies of this Act: * * *

STATEMENT

A. *The Board's Findings*

Employment of longshoremen by the Maritime Ship Cleaning and Maintenance Company, an enterprise engaged in ship cleaning and maintenance at the Port of Philadelphia, is handled in accordance with the provisions of contracts entered into between the Philadelphia Maritime Trade Association, representing maritime industry employers including Maritime, and the International Longshoremen's Association and its locals, including Local 1566 (B.A. 11a-12a; 47a-48a). One such agreement was entered into on March 12, 1954, and expired on September 30, 1956. With respect to hiring procedures, the agreement provided for a

daily "shape-up" and contained the following union security clause (B.A. 12a; 96a):

> UNION SECURITY: As to any and all work covered hereunder, finally determined by duly constituted public authority not to be subject to any statute forbidding a preferential hiring provision, the employers agree to give a preference to longshoremen who are members of the Union in good standing. As to all other work the employers agree to institute and maintain a Union Shop as shall comply with Section 8(a)(3) of the National Labor Relations Act or any amendment thereto.

A second collective bargaining agreement, containing substantially identical provisions respecting the shape-up and union security, was entered into on March 18, 1957, but was made retroactive to October 1, 1956 and extended for a period of three years from that date (B.A. 13a; 93a-94a). At the time the Union entered into the March 1954 contract it had satisfied the requirement in Section 8(a)(3) of the Act which made compliance with the filing provisions of Section 9(f), (g) and (h) prerequisite to the execution of a lawful union security agreement (B.A. 16a; 39a).[2] The Union's compliance status lapsed, however, on December 31, 1953, and was not fully renewed until August 2, 1957, nearly six months after the execution of the second agreement in March 1957 (B.A. 17a; 40a-43a, 90a).

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[2] Section 9(f), (g) and (h) provided for the filing of data respecting union finances and organizational structure, and of non-communist affidavits by union officers. These provisions have been repealed by the 1959 amendments to the Act. 73 Stat. 519, 525.

Hiring at Maritime is effected through the shape-up (B.A. 18a; 56a-57a). Pursuant to this system men seeking employment gather at Maritime's place of business at about 7:30 a.m. each work day where, upon signal, they present themselves ("shape-up") for selection by Maritime's hiring foremen to fill the available jobs (B.A. 18a; 54a-55a). The hiring foremen are members of the Union and follow the uniform practice of employing union members in preference to other applicants (B.A. 18a, 21a; 49a, 55a, 59a, 70a-71a, 74a). Thus applicants are classified in the shape-up as (1) book men (sometimes also called button men); (2) card men; (3) those who have neither books nor cards (B.A. 19a-20a; 55a-56a). These terms refer to the union status of the applicant. Book men are full fledged members of the Union (B.A. 19a; 56a). They are issued a new and differently colored button each month upon payment to the Union of the month's dues (B.A. 19a; 49a-50a). The buttons are worn by the members in prominent display, and are used to identify the wearer as a member of the Union in good standing (B.A. 19a-20a; 49a-50a, 58a, 71a) and thereby qualifying him for preference in hiring as required by the constitution of the International Longshoremen's Association (B.A. 20a; 92a).

Card men are not union members, but are approved by the Union for work for a monthly period upon payment of a fee equivalent to a month's dues (B.A. 19a; 49a, 56a). However, an individual who acquires cards for 12 consecutive months and who has 700 hours of waterfront work experience is eligible for full membership in the Union (B.A. 19a; 49a).

At each morning shape-up the hiring foremen make the first job assignments to book men (B.A. 21a; 59a, 74a). If there are remaining jobs after the supply of book men have been exhausted, assignments are then made among the card men (B.A. 21a; 59a, 72a, 74a). Finally, if any work remains, the foremen make their selections from applicants who have neither a union book nor a permit card (*ibid.*). The only occasions upon which non-members are hired in preference to union members are instances where the member is being disciplined for a violation of a union or contract rule, or where a special work assignment has been reserved for the member (B.A. 22a; 57a-59a).

Marvin Gould and Zack Page were not members of the Union, but had worked at Maritime as card men since 1955 and 1952, respectively (B.A. 20a-21a, 28a-29a; 59a-60a, 72a-74a, 77a). Following a November 1956 strike in the Philadelphia waterfront, the Union initially refused to issue cards to Gould and Page because they had not performed picket duty, but withdrew the refusal several days later when the unfair labor practice charges were filed in this case (B.A. 20a-21a; 67a-68a). Gould and Page, however, neither requested nor obtained cards after the initial refusal, but they continued to shape-up each morning at Maritime (B.A. 21a, 29a-30a; 67a-69a, 70a, 75a). In this role they were accorded the lowest priority under the hiring system, regardless of their employment experience, and accordingly obtained employment only whenever the supply of book men and card men did not exhaust the available work assignments (B.A. 30a; 69a-70a).

B. *The Board's Conclusions and Order*

The Board concluded that the Union, by entering into and taking part in the hiring practices at Maritime through foremen subject to union discipline, caused discrimination in favor of union members, and thereby violated Section 8(b)(2) and (1)(A) of the Act. By its part in subjecting employees Gould and Page to this discriminatory practice, the Union was similarly found to have violated these statutory provisions. The Board also concluded that the union security provisions in the 1954 and 1957 contracts were invalid, and that the Union had further violated Section 8(b)(2) and (1)(A) of the Act by maintaining them in effect. The invalidity of the union security clauses was premised on alternative grounds: first, that the language which purported to defer the clause granting preference to union members could not be given effect, because the hiring practice showed that "the parties never really intended to postpone operation of the preference system" (B.A. 4a); and second, that the deferral language was "so obscure that a workingman covered by its provisions could hardly be expected to know when union membership was required and when it was not" (*id.*, n. 3). In addition, the union security clause in the 1957 contract was found to be independently unlawful, in view of the fact that the Union had not complied with the filing requirements of the Act at the time such agreement was executed (B.A. 3a-4a, 18a, 23a, 29a-30a).

To remedy the foregoing violations the Board's order requires the Union to cease and desist from entering into or maintaining any agreement or practice with Maritime or any other employer member of Philadel-

phia Marine Trade Association, under which union members are given preference in employment, except to the extent authorized by Section 8(a)(3) of the Act; from causing Maritime to discriminate unlawfully in the employment of Marvin Gould and Zack Page, or any other applicant; and from in any other manner restraining or coercing Maritime's employees in the exercise of the rights guaranteed in Section 7 of the Act. Affirmatively, the Board's order requires the Union to reimburse Maritime's employees for all fees, dues and other monies collected pursuant to the unlawful contracts and discriminatory hiring practices, to make whole Gould and Page for any loss of wages incurred as a result of the discrimination against them, and to post appropriate notices. (B.A. 5a-7a.)

C. *The Decision of the Court of Appeals*

The Court of Appeals sustained the Board's unfair labor practice findings, and granted enforcement of its order, except that portion requiring reimbursement of monies paid to the Union.[3] Enforcement of the latter portion was denied upon the authority and reasoning of the court's earlier decisions in *National Labor Relations Board* v. *American Dredging Company*, 276 F. 2d 286, petition for certiorari pending, No. 123, this Term, and *National Labor Relations Board* v. *United States Steel Corporation (American Bridge Division) and Local Union 542, International Union of Operating Engineers, AFL-CIO*, not yet reported, petition for

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[3] The court, in its decree, also modified the breadth of the cease and desist provisions (Appendix, *infra*, pp. 21-22). That modification is not contested here.

certiorari pending, No. 228, this Term. (Appendix, *infra*, p. 19-20.)

REASONS FOR GRANTING THE WRIT

This case presents the question of whether the Board, as a remedy for hiring practices which unlawfully encourage union membership, may require that monies paid by the employees to the union while subjected to those practices be repaid to them. The same question is presented in *Local 60, United Frotherhood of Carpenters* v. *National Labor Relations Board* and *National Labor Relations Board* v. *Local 357, International Brotherhood of Teamsters*, Nos. 68 and 85, this Term, certiorari granted, June 27, 1960. In addition, Board petitions are pending in other cases involving the question, including *American Dredging Company* and *United States Steel Corporation* (*American Bridge Division*), relied upon by the court below—Nos. 89, 120, 123, 228, 229, this Term. The instant petition is filed to preserve the Board's position on the issue in this case.

CONCLUSION

For the foregoing reasons, the present petition should be granted, or, in the alternative, held in abeyance pending a decision on the question in Nos. 68 and 85.

Respectfully submitted.

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I authorize the filing of this petition for a writ of certiorari.

J. LEE RANKIN,
Solicitor General.

AUGUST 1960.

APPENDIX

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 12,903

NATIONAL LABOR RELATIONS BOARD, PETITIONER,

v.

LOCAL 1566, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, RESPONDENT.

ON PETITION FOR ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

Argued November 16, 1959

Before BIGGS, *Chief Judge* and GOODRICH and McLAUGHLIN, *Circuit Judges.*

OPINION OF THE COURT

(Filed May 4, 1960)

By McLAUGHLIN, *Circuit Judge.*

The National Labor Relations Board (Board) seeks enforcement of its order, pursuant to Section 10(e) of the National Labor Relations Act (Act), 29 U.S.C. Section 151 et seq., against the respondent, Local 1566, International Longshoremen's Association (Union). The Board found that the Union violated Section 8(b)(2) and (1)(A) of the Act by causing an employer, Maritime Ship Cleaning and Maintenance Co. (Maritime) to discriminate against two applicants for employment, Marvin Gould and Zack Page, because of non-membership in the Union; by participating in a discriminatory hiring practice against non-member applicants; and by maintaining in effect, in the collective bargaining agree-

ments of 1954 and 1957, unlawful union security clauses. The Trial Examiner held that the 1957 agreement only was unlawful for failure to comply with the filing requirements of Section 9(f), (g) and (h) of the Act, but the General Counsel contended and the Board found that both contracts were unlawful apart from any considerations of filing.

The Board ordered the Union to cease and desist from entering into or enforcing any agreement or practice of preferential hiring except as authorized by Section 8(a)(3) of the Act; from causing, or attempting to cause Maritime to refuse employment to Gould and Page, or any other applicant, for non-membership in the Union in violation of Section 8(a)(3); and from restraining or coercing in any other manner employees or applicants for employment in the exercise of their rights under Section 7 of the Act, except to the extent authorized by Section 8(a)(3). The Board also ordered the following affirmative action: To make whole Gould and Page for any loss of pay resulting from the discrimination and to refund to the employees of Maritime the initiation fees, dues and all other monies unlawfully exacted from them as a price for their employment, for the period beginning six months prior to the filing and service of the charges (commonly referred to as the "Brown-Olds Rule").

Hiring at Maritime is effected by means of the "shape-up" system. Men desiring employment report each day at Maritime's place of business where hiring foremen, employees of Maritime and themselves union members, select from the group for whatever work is available on that day. The Trial Examiner determined, and the evidence so establishes, that priority for employment was given according to union status. The applicants fell into three categories: (1) Book-men, who were full fledged members of the union and who, upon

payment of dues, received an identification button, differently colored for each month. (2) Card-men, not members of the Union but who, upon payment of "dues" each month, were given a card. With twelve consecutive cards and compiling 700 work-hours on the waterfront, a card-man becomes eligible for full union membership. (3) Those applicants who had neither books nor cards. Priority was allocated according to these categories, book-men receiving preference and upon exhausting these, card-men and finally, if any jobs remained, the last class.

Gould and Page were card-men, but in December 1956 the Union, through its Secretary-Treasurer, refused to issue their cards (along with some 7 to 10 other men) because they had not picketed during a strike which occurred about mid-November 1956. Subsequent to their bringing charges the parties were informed that the Union had rescinded its refusal to issue the cards. However, neither again sought them.

The Union resists enforcement of the Board's order on the grounds that any discriminatory hiring practices at Maritime were the unilateral action of Maritime's hiring foremen and there was insufficient evidence to support a finding that the Union participated therein; and the union security clause in the collective bargaining agreements was not unlawful since it was couched in terms of a "savings" or "deferral" clause. The Union also contests the Board's application of the "Brown-Olds Rule" in its remedy.

The Union does not question, and we shall not consider, the finding that it was unauthorized to make a union security contract in 1957 for failure to comply with Section 9(f), (g) and (h) of the Act, nor the denial of its motion, at the hearing, for production of names and pre-hearing statements of witnesses.

This court has reviewed the whole record and con-

cludes there is substantial evidence to support the Board's findings. Such findings therefore are conclusive and will not be disturbed. Universal Camera Corp. v. Labor Board, 340 U.S. 474 (1951).

I

Union Participation

The hiring system was based upon the union status of the men shaping-up—that is whether they had buttons, cards or neither—and it was the Union who determined that status and either issued, or refused to issue, a button or a card. When some nine to twelve card-men, including the complainants Page and Gould, did not walk a picket line the Union refused to issue them cards. This action might have been meaningless as a disciplinary measure if the Union had not been completely aware that without a card, employment opportunity was greatly reduced under Maritime's hiring practices. The constitution of the International provides that only the regular ILA button "shall be recognized in the hiring of men for work" and provides a penalty for violations. The constitution was supplemented on the local level by the collective bargaining agreements calling for hiring preference for Union members.[1]

The sum of this is a clear indication of a Union policy or practice of preferential hiring. The Trial Examiner held:

> "* * * that where the circumstances disclose the establishment or imposition of a discriminatory hiring policy by or for a local union, that union may be held responsible where discrimination is a proximate and foreseeable consequence of the operation of the policy, and discrimination in fact

[1] The "deferral" clause of these agreements is discussed infra.

results. This is not to impose upon the local responsibility for programs or conduct over which it has no control. It is merely to hold it accountable for its own action. If the local wishes to avoid liability in such situations there are effective methods by which it may disavow the offending policy."

At the hearing, the Union attempted to rebut this evidence with testimony that the hiring foremen were not aware of the clause in the International constitution. The Examiner did not credit this testimony since only one of the five foremen would so testify. Testimony that the local was orally advised by the International that the hiring clause in the constitution was not enforced and that locals, in any event, have blanket authority to ignore any provision in the constitution which they deem illegal was considered "incredible" by the Examiner in the teeth of evidence that other provisions are followed and enforced, particularly a specific method for dealing with the problem of illegal provisions. And the constitution itself declares null and void any local by-law in conflict with the constitution. The question of credibility of testimony is within the Trial Examiner's domain. "* * * it is not our task to resolve questions of credibility of those who testify at the Board hearings." National Labor Relations Board v. Local 420, etc., 239 F.2d 327, 328 (3 Cir. 1956).

The Union attempts to meet the Examiner's finding by averring that union participation in unfair practices must be proved by direct evidence. We are of the opinion that this is erroneous. It is true that many of the cases cited by the Board in support of its position contain indisputable evidence that the offending union formally requested or demanded that the company follow a discriminatory hiring practice. See e.g. National Labor Relations Board v. Local 369, etc., 240 F.2d 539 (3 Cir. 1956); National Labor Relations Board v. Local

420, etc., 239 F.2d 327 (3 Cir. 1956). But these decisions do not establish a minimum standard for finding union participation. In fact in National Labor Relations Board v. Local 369, supra, at 544, this court stated: "The absence of proof that the Union specifically requested the Company to discriminate is not critical where there is substantial evidence to support the finding of a discriminatory hiring arrangement actively participated in by the Union." The Board may, as it did here, draw a reasonable inference from the believable evidence. It must, of course, be supported by substantial evidence but an inference as such is not proscribed by the Act. This has been settled by Radio Officers v. Labor Board, 347 U.S. 17, 48-52 (1954). There, union participation was proved but the unfair practice, encouragement of union membership, was inferred by the Board. The Court, in upholding the Board said at page 52:

> "Since encouragement of union membership is obviously a natural and foreseeable consequence of any employer discrimination at the request of a union, those employers must be presumed to have intended such encouragement. It follows that it was eminently reasonable for the Board to infer encouragement of union membership * * *."

Conversely, the unfair practice being proved, the Board may make a reasonable inference from all the evidence that the Union participated in such practice. "The unfair labor practice can be found from a procedure which shows a practice or understanding though it may not establish an express contract between the parties." National Labor Relations Board v. Local 420, supra at 330.

The Union's contention that direct evidence, rather than inference, is necessary to implicate it in the unfair

practices is set at rest by the following language in Radio Officers, supra at 50:

> "There is nothing in the language of the amendment [Taft-Hartley] itself that suggests denial to the Board of power to draw reasonable inferences. It is inconceivable that the authors of the reports [House Reports on Taft-Hartley] intended such a result, for a fact-finding body must have some power to decide which inferences to draw and which to reject. We therefore conclude that insofar as the power to draw reasonable inferences is concerned, Taft-Hartley did not alter prior law."

The testimony in this instance is sufficient to support the resulting inference of the Board. Whether this court would have arrived at the same result is of no matter. Our review is limited to the sufficiency of the supporting evidence. Universal Camera Corp. v. Labor Board, 340 U.S. supra, 488.

II

Union Security Clause

We turn now to the legality of the union security clause contained in the collective bargaining agreements between the Union and Maritime. It reads:

> "UNION SECURITY: As to any and all work covered hereunder, finally determined by duly constituted public authority, not to be subject to any statute forbidding a preferential hiring provision, the employers agree to give preference to men who are members of the Union in good standing. As to all other work, the employers agree to institute and maintain a union shop as shall comply with Section 8(a)(3) of the National Labor Relations Act or any amendment thereto."

The Board found that this clause, in both the 1954 and 1957 agreements, was illegal despite the deferral language therein. This decision was based on the finding that, since the parties immediately began implementing the preferential portion without regard to the deferral language, the clause was executed with the present intent to create discriminatory conditions of employment.

The Union counters that a collective bargaining agreement *valid on its face* cannot be converted into an illegal hiring clause because of *subsequent* discriminatory practices. This argument can be dismissed as not meeting the issue. The Board found that the agreement was *not valid in fact, from its very inception.* It cannot be seriously argued that the mere recitation of words in a proper and accepted form can throw a blanket absolution over illegal acts presently performed under a clause, included in a contract, purportedly to cover a future possibility of legal sanction.

Finding as we do, it is unnecessary to discuss the issue whether the clause meets the requirement of "clear and unequivocal" set forth in Lewis v. Quality Coal Corp., 270 F.2d 140 (7 Cir. 1959). However in passing, it should be pointed out that the clause involved, in both meaning and clarity, is a far cry from the one discussed in the Lewis opinion.

III

The Remedy

The sole remaining problem is the Board's application of the "Brown-Olds Rule." In a recent decision, National Labor Relations Board v. American Dredging Company, ____ F.2d ____ (3 Cir. 1960), this court declined to enforce the rule against an employer who neither dominated the union nor collected the fees and dues. Further, there was no evidence in the record in-

dicating that employees were required to join the union as a condition to obtaining employment. Requiring the employer in that situation to reimburse fees and dues paid to their union would be a windfall for the employees, and in no way effectuate the purposes of the Act. And in National Labor Relations Board v. United States Steel Corporation (American Bridge Division) and Local Union 542, AFL-CIO, ___ F.2d ___ (3 Cir. 1960), we have continued to insist that the reimbursement order must be limited to employees shown to have been coerced. And we emphasize that in such alleged instances it is necessary to produce evidence of coercion as to each individual concerning whom it is asserted. Since the record before us furnishes no proof of that type we are forced to refuse the part of the Board's order allowing reimbursement to employees for fees and dues they had paid. Regarding Marvin Gould and Zack Page, they are to be made whole for any loss of pay incurred by them as a result of the discrimination against them above stated.

The Board's order will be enforced except as to Paragraph 2(a) thereof which will be stricken.

The notice called for by Paragraph (c) of the Order will be amended by striking out its last paragraph. A decree in accordance with this opinion may be submitted.

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 12,903

NATIONAL LABOR RELATIONS BOARD, PETITIONER,

v.

LOCAL 1566, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, RESPONDENT.

DECREE ENFORCING IN PART AND DENYING IN PART AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

Before: BIGGS, Chief Judge and GOODRICH and MCLAUGHLIN, Circuit Judges:

THIS CAUSE came on to be heard upon the petition of the National Labor Relations Board to enforce its order dated January 16, 1959. The Court heard argument of respective counsel on November 16, 1959, and has considered the briefs and transcript of record filed in this cause. On May 4, 1960, the Court being fully advised in the premises, handed down its opinion enforcing in part and setting aside in part the Board's said Order. In conformity therewith, it is hereby

ORDERED, ADJUDGED AND DECREED by the United States Court of Appeals for the Third Circuit that Respondent, Local 1566, International Longshoremen's Association, its officers, representatives, agents, successors and assigns shall:

1. Cease and Desist from:

(a) Giving effect to, entering into, renewing, maintaining, or enforcing any agreement, arrangement, understanding or practice with Philadelphia Marine Trade Association, Maritime Ship Cleaning and Maintenance Co., or any other member employer of Phila-

delphia Marine Trade Association, requiring employees or applicants for employment to be or become members of, or to obtain clearance or approval from, the Respondent Union as a condition of employment except as authorized by Section 8 (a) (3) of the National Labor Relations Act, (hereinafter called the Act.)

(b) Causing or attempting to cause Maritime Ship Cleaning and Maintenance Co. to refuse employment to Marvin Gould and Zack Page because they are not members of, or have not secured clearance or approval from, the Respondent Union in violation of Section 8 (a) (3) of the Act.

2. Take the following affirmative action which the Board has found will effectuate the policies of the Act.

(a) Make whole Marvin Gould and Zack Page for any loss of pay incurred as a result of the discrimination against them in the manner set forth in the section of the Trial Examiner's Intermediate Report dated January 16, 1958 entitled "The remedy."

(b) Post at its offices in Philadelphia, Pennsylvania, and all other places where notices to members are customarily posted, copies of the notice attached hereto and marked "Appendix." Copies of said notice to be furnished by the Regional Director for the Fourth Region (Philadelphia, Pennsylvania) shall, after being duly signed by representatives of the Respondent, be posted immediately upon receipt thereof and maintained for sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(c) Mail to the aforesaid Regional Director signed copies of the notice marked "Appendix" for posting by

Maritime Ship Cleaning and Maintenance Co., the employer willing, in places where notices to employees and prospective employees are customarily posted.

(d) Notify the said Regional Director in writing, within ten (10) days from the date of this Decree what steps the Respondent has taken to comply therewith.

BY THE COURT,
(S) McLAUGHLIN,
Circuit Judge.

DATED: June 14, 1960.

Notice

To All Members of Local 1566, International Longshoremen's Association, and Employees and Applicants for Employment of Maritime Ship Cleaning and Maintenance Co.

Pursuant To

A Decree of the United States Court of Appeals for the Third Circuit, enforcing in part and denying in part, an order of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify you that:

We Will Not give effect to, enter into, renew, maintain, or enforce any agreement, arrangement, understanding, or practice with Philadelphia Marine Trade Association, Maritime Ship Cleaning and Maintenance Co., or any other member employer of Philadelphia Marine Trade Association, requiring employees or applicants for employment to become members or to obtain clearance or approval as a condition of employment, except to the extent that the requirement of clearance or approval by a labor organization is lawfully imposed under the conditions stated in *Mountain Pacific Chapter of the Associated General Contractors*, 119 NLRB No. 126.

We Will Not cause or attempt to cause Maritime Ship Cleaning and Maintenance Co., its officers, agents, successors, or assigns, to discriminate against employees or applicants for employment because they are not members of or have not received clearance from our organization, in violation of Section 8 (a) (3).

WE WILL make Marvin Gould and Zack Page whole for any loss of pay they may have suffered as result of discrimination against them.

LOCAL 1566, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION,
(Labor Organization).

Dated ——, ——. By ——, ——,
(Representative) (Title)

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